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IN THE SUPREME COURT  
STATE OF ARIZONA

In the Matter of:	)	
	)	
PETITION TO AMEND	)	
RULE 23 OF THE RULES	)	Supreme Court No. R-12-_____
OF CIVIL PROCEDURE	)	(expedited consideration requested)
_____	)	

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to consider whether to adopt the attached proposed amendments to the Arizona Rules of Civil Procedure (RCP), on an expedited basis in response to the enactment of A.R.S. 12-1871 et. seq. concerning certification of class actions through Senate Bill 1346 (Laws 2013, Chapter 241). This petition addresses how to amend the rules to conform to the new statutes rather than whether the Court should change court rules to include the new class action certification procedures adopted by the legislature. The text of the proposed amendments is set out in the accompanying Appendix A.

## **I. Background and Purpose of the Proposed Rule Amendment.**

SB 1346 was passed and signed into law in the First Regular Session of the Fifty-first Legislature (Ch. 241)(2013). The bill's effective date is September 13, 2013.

SB 1346 adds Article 4 in Title 12, Chapter 10 relating to class actions.<sup>1</sup> The bill largely mirrors the language and content in Rule 23(c) and 23(d), RCP. SB 1346 also adds several new requirements including: 1) the court must hold a hearing prior to certifying or denying a class action, 2) the court must enter a written order granting class certification identifying the court's reasons and the supporting evidence, 3) the parties now have a right to an interlocutory appeal of an order granting or denying class certification, and 4) the trial court proceedings are required to be stayed during the appeal except the court may allow discovery to proceed, if a party requests it.

SB 1346 provides the appellate jurisdiction found lacking by this Court in *Garza v. Swift Transportation Co., Inc.*, 222 Ariz. 281, 213 P.3d 1008 (2009). In that case, the Court held that the court of appeals, which relies on statutory authority for its jurisdiction, lacked jurisdiction to consider certification orders on an interlocutory basis under ARS § 12-2101,<sup>2</sup> and that a special action was the only

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<sup>1</sup> A.R.S. § 12-1871 et.seq.

<sup>2</sup> Arizona's special action rules provide a suitable means, in an extraordinary case, of permitting the court of appeals to address the issues raised by a trial court's class certification order. . . . Furthermore, the special action procedure will avoid the anomaly created by *Reader [v. Magma-*

means available to challenge a certification order, and only in “extraordinary” cases.

## **II. Pre-Petition Comments.**

The petition has not been circulated for pre-petition comments.

## **III. Effective Date of the Proposed Rule Amendments.**

The statutory amendments will become effective on September 13, 2013. Therefore expedited consideration and adoption of the proposed rule amendments is necessary to conform the rules to the new statutory provisions before the effective date. Petitioner requests the court adopt any rule amendments implementing the statutory provisions, effective September 13, 2013, with a formal comment period to follow, as permitted by Supreme Court Rule 28(G).

RESPECTFULLY SUBMITTED this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

By \_\_\_\_\_  
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*Superior Copper Co.*, 494 P.2d 708 (1972)] and subsequent cases, under which orders denying class certification may be reviewed on appeal, but orders granting certification may not. Garza v. Swift Transp. Co., Inc., 222 Ariz. 281, 287, 213 P.3d 1008, 1014 (2009).

## APPENDIX A

(language to be removed is shown in ~~striketrough~~, new language is underlined)

### **Rule 23(c). Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions**

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall hold a hearing and determine by written order whether it is to be so maintained. The court shall set forth its reasons and shall describe all evidence in support of its determination. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) through (4) [No changes]

### **Rule 23(f). Appeals**

The court's order certifying or denying class action status is appealable in the same manner as a final order or judgment. During the pendency of an appeal under A.R.S. § 12-1873, all discovery and other proceedings shall be stayed except that, on motion of a party, the court may permit discovery proceedings to continue.